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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MOSHE PERRY,

Plaintiff - Appellant,

v.

TYSON WALSH; et al.,

Defendants - Appellees.

No. 04-56014

D.C. No. CV-03-01455-RGK

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted November 8, 2005<sup>\*\*</sup>

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Moshe Perry appeals pro se from the district court's judgment in favor of the defendants following a jury trial in Perry's 42 U.S.C. § 1983 action alleging use of

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

excessive force during his arrest. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Perry contends that the jury verdict was not supported by the evidence and that the trial was tainted by evidentiary errors and jury bias, but he did not provide a transcript of the proceedings as required by Fed. R. App. P. 10(b)(2). Without a trial transcript and supporting affidavits, we are unable to review these contentions. *See Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991).

Perry also contends that the district court erred in failing to give two jury instructions. This contention fails because one of the instructions was in fact given to the jury, and Perry did not request the other instruction to the district court.

In his reply brief, Perry contends that he should be allowed to provide a substitute statement of the proceedings under Fed. R. App. P. 10(c). However, his vague assertions concerning his efforts to obtain the transcript do not demonstrate that it was “unavailable.” *See Thomas v. Computax Corp.*, 631 F.2d 139, 143 (9th Cir. 1980) (“A transcript is unavailable within the meaning of Rule 10(c) of the Appellate Rules when the transcript is physically unobtainable.”).

**AFFIRMED.**